IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2004

Coram

The Hon'ble Mr. Justice V.KANAGARAJ
and
The Hon'ble Mr. Justice T.V.MASILAMANI

Crl. Appeal No.1163 of 2002

R.Maruthamuthu .. Appellant

-Vs-

State rep. by
The Inspector of Police,
Perambalur Police Station,
Perambalur. .. Respondent

Criminal Appeal against the judgment in S.C.No.26 of 2001 dated 27.0
2.2002 on the file of the Additional District Sessions Judge-cumChief Judicial
Magistrate, Perambalur District.

!For Appellant .. Mr.S.Swamidoss Manoharan

^For Respondent .. Mr.E.Raja,
Addl. Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by V.KANAGARAJ, J.)

This Criminal Appeal is preferred against the judgment dated 27.02.2
002 rendered in S.C.No.26 of 2001 by the Court of Additional Sessions
Judge-cum-Chief Judicial Magistrate, Perambalur, thereby convicting the
appellant/first accused for the commission of offence punishable under Section
302 I.P.C. and sentencing him to undergo imprisonment for life and to pay a
fine of Rs.1000/- in default to undergo rigorous imprisonment for a further
period of six months and under Section 4 04 I.P.C. sentencing him to undergo
rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-,
in default to undergo rigorous imprisonment for a further period of three
months, further directing to run the sentences concurrently.

2. It is relevant to clarify at this juncture that the charges as
framed by the trial Court was against the appellant/convict and yet another

accused, namely, Selvaraj, S/o. Rathinam, who is the appellant in Crl.A.No.384 of 2002 at the instigation of whom on 23-12-1996 at about 16.30 hours in the cotton field belonging to one Narayanasamy in Koulpalayam Village of Ariyalur the appellant herein, who was the first accused tied around the neck of one Papathi, who was born dumb with intend to steel her jewels and committed murder of the said Papathi, while she was working in the cotton field, thus committing the offence punishable under Section 302 I.P.C. Consequently, on the same day at the same time and place and in the course of the same transaction the appellant/convict at the instigation of the second accused one Selvaraj by removing from the dead body of the deceased Papathi one pair of ear studs and one nose stud, thus dishonestly misappropriating those jewels and hence, became liable to be prosecuted and punished for the commission of the offence under Section 404 I.P.C. and hence, the appellant/convict became charged for the offences punishable under Sections 302 and 404 I.P.C. and the second accused therein, namely, Selvaraj having instigated the first accused for committing the murder of the deceased and dishonestly misappropriating her jewels and thereafter purchased the said jewels knowingly they were the dishonestly stolen properties from the dead body of the deceased and further since, he was in the habit of receiving the stolen properties from the first accused in a routine manner knowingly that they were stolen properties and with intend to obtain wrongful gain and therefore, became punishable under Sections 302 read with 109 and Section 404 read with 109 I.P.C. and under Sections 411 and 413 I.P.C.

3. Based on the above charges the trial Court having conducted the trial against the appellant/convict and the second accused therein found both of them guilty of the respective offences charged, as a result of which, the appellant was found guilty of both the offences and was convicted and sentenced to undergo imprisonment and to pay the fine as extracted in paragraph 1 above. Likewise, the second accused therein, namely, Selvaraj was also convicted and sentenced with life imprisonment and other imprisonments under the other Sections and the said second accused having preferred a separate Criminal Appeal against his conviction and sentence, the appellant/first accused has come forward to prefer the above Criminal Appeal on certain grounds such as (i) that the trial Court failed to consider that there was no eye witness to the occurrence; (ii) that the Court below has erred in placing reliance on the evidence of P.W.5, who claimed that he saw the appellant around 3.00 p.m. on the date of occurrence, near the cotton field, where the deceased was collecting cotton; (iii) that the lower Court has erred in placing reliance on the identification parade conducted by P.W.8 on 29-04-2000 in a belated manner; (iv) that the said identification parade was not conducted in the manner required under law and in accordance with the procedures laid down by law; (v) that the Court below failed to consider that the appellant was arrested belatedly and there was no direct evidence to implicate him; (vi) that the alleged recovery of the properties concerned in this case from the second accused on 1-7-1999 is inadmissible under Section 27 of Indian Evidence Act; (vii) that the properties in M.Os. 1 and 2 have not been identified by P.W.1 as that of belonging to the deceased; (viii) that the trial Court has erred in not considering that P.W.7, who attested the confession statement of the accused has given a different place of arrest in other cases and (ix) that the reasons assigned by the Court below are contrary

to law, weight of evidence and probabilities of the case.

4. Coming to assess the case of the prosecution through the evidence placed on record before the trial Court this Court is able to find that the prosecution whose paramount burden is to prove its case beyond all reasonable doubts has examined 15 witnesses for oral evidence as P.Ws. 1 to 15, marked 20 documents for documentary evidence as Exs. P.1 to 20, besides marking two material objects as M.Os. 1 and 2 the recoveries effected from the second accused i.e., one pair of ear studs and a single nose stud.

5. P.W.1 is the sister of the deceased, who would depose that on 23 -12-1996 at about 8.00 a.m. the deceased Papathi, went to the field to collect cotton; that she has also gone to another field and when she returned back home at 6.00 p.m. the people at home were weeping and on enquiry, she came to know about the death of Papathi and when she saw the body there was injury on her neck and the ear studs and nose stud that she was wearing have disappeared; that the ligature mark was seen around her neck; that she lodged a complaint in Ex.P.1 and after some days, when the police showed the jewels worn by her deceased sister, she identified the same as M.Os. 1 and 2. P.W.2 is none other than the mother of P.W.1 and the deceased and this witness would depose that herself having gone for a condolence and on being informed of the death of the deceased her relatives brought the body back home putting the same in a cart; that she found the ear studs and the nose stud were missing when the body was seen at the cotton field; that suspecting foul play, they lodged a complaint through P.W.1 to the police.

6. P.W.3 would speak to the lending of the saree and jewels to P.W.2 for attending to a condolence and this witness would further depose that the deceased went only to the field of this witness for collecting cotton and when she went to the field around 4.00 p.m. she saw the deceased lying dead and would inform the mother of the deceased regarding the death of the deceased, she would also identify the ligature mark around the neck of the deceased. P.W.4 is one who helped the body to be brought from the field and this witness would also say that the deceased used to wear the ear studs and nose stud, but they were not seen on her body and that there was a ligature mark around her neck. P.W.5 would depose that around 3.00 p.m. on the date of the occurrence, he saw his sister's daughter Papathi the deceased who was born dumb was collecting cotton and there was also seen another short dark complexioned person and when he enquired about him, he informed him that he was a cotton merchant. This witness would also say that he could identify the said person, if he was shown to him. He would also identify the appellant/first accused as the person, whom he saw on the date of the occurrence in the cotton field, in the open Court. This witness would also depose that at 6.00 p.m. when he returned back home, he saw everybody in his sister's house weeping on account of the death of Papathi. This witness would identify the appellant in the identification parade held inside the prison. P.W.6 is the Village Administrative Officer, who at the request of the police would go to the spot along with the police, when he would witness the police preparing the Ex.P.2 Observation Mahazar along with one Thangavelu his Office Assistant. P.W.7 is yet another Village Administrative Officer and this witness would be present at the time the confession statement was given by the

appellant/accused in which this witness and yet another person, by name Mani would sign and it is in the presence of this witness the accused would confess that he would show the place and jewels robbed and would also show one Selvaraj, who used to purchase those jewels for a meagre sum. P.W.8 is the Magistrate, who conducted the identification parade and this witness would depose to the effect of the conduct of the entire identification parade, in which the witnesses would identify the appellant/accused, particularly P.W.5 .

7. P.W.9 is the medical witness the Doctor attached to Perambalur Government Hospital at the time of the occurrence and this witness would conduct the post-mortem on the body of the deceased at 4.30 p.m. On 24-12-1996 when he found the eyes of the deceased bulging and from the nose bleeding and swelling of the face. This witness would also see the ligature mark to the extent of 10 x 3/4 cm around the neck of the deceased. This witness would offer opinion to the effect that the deceased would appear to have died 24 to 30 hours prior to the post-mortem and he would give the cause of the death due to asphyxia and squeezing of the neck and obstructing the blood flow. This witness would also issue Ex.P.8 post-mortem certific ate. P.W.10 is the witness to the recovery mahazar and he would witness the recovery of the pair of ear studs and one nose stud from the second accused under the cover of Ex.P.9 mahazar and this witness and his friend one Kumar would sign the said mahazar. P.W.11 was the inspector of Police, who was in charge at the relevant point of time at Padalur Police Station; that on receipt of Ex.P.10 First Information Report from the SubInspector of Police who registered the case in Perambalur Police Station Crime No.853 of 1996 under Section 174 Cr.P.C. He would inspect the spot and would prepare Ex.P.2 observation mahazar and Ex.P.11 rough sketch. This witness would also conduct the inquest on the body of the deceased from 1.00 p.m. to 3.00 p.m. that day and would examine the witnesses found there and record their statements and would also prepare Ex.P.12 inquest report. He would then examine some more witnesses and record their statements and thereafter, sent the body of the deceased along with the requisition letter to the hospital for postmortem and since, he got transferred from the in charge station, he would hand over the case diary to the regular Inspector of Perambalur Police Station.

8. P.W.12 was yet another Inspector of Police in charge of the control room, in whose presence P.W.1 would identify the ear studs. P.W.13 is yet another Inspector, who would do his part of investigation and would alter the section from 174 Cr.P.C. to Sections 302 and 379 I.P.C. and would sent express F.I.R. to the Court which would be marked as Ex.P.13. P.W.14 is another Inspector, who would record the confession statement of the accused in the presence of the witnesses and this witness in accordance with the admissible portion of the confession statement would recover the articles concerned with Crime Nos. 2 22 and 9 of 1999 and would send him for judicial custody. Then on 30 -6-1999 this witness would take the accused in police custody and would cause the recovery of the jewels concerned with this case i.e., the ear studs and the nose stud on 1-7-1999 at about 2.30 a.m. from the second accused Selvaraj under the cover of mahazar Ex.P.9 and would then prepare Form-95 and would sent the same to the Court. P.W.15 is the Inspector of Police, who is the investigating Officer and this witness would continue the investigation and would examine the other witnesses including the medical

witness the Doctor, who conducted autopsy and would record their statements. He would also give the requisition for the M.Os. to be referred to the Chemical Analysis Centre in Ex.P.14 and in Exs. P.15 and 16 Court would give the letters. Exs. P.17 and 19 are the Chemical Analyst's Reports of the hyoid bone and other items of the body of the deceased. The letter of the Magistrate would be marked as Ex.P.18 and the report obtained from the Chemical Analyst would be marked as Ex.P.20. This witness would further depose that on completion of the investigation on 22-3-2000, he laid the charge sheet in the above case.

9. The trial Court having analysed the oral and documentary evidence and the M.Os. as broughtforth, particularly based on the identification of the appellant/accused by P.W.5 in the identification parade held by the Magistrate on 29-4-2000 at 11.50 a.m. and would ultimately arrive at the conclusion that the prosecution has proved its case beyond all reasonable doubt against this appellant and would sentence him in the manner aforementioned.

10. It is only challenging the conviction and sentence as arrived at by the Court of Additional Sessions Judge-cum-Chief Judicial Magistrate, Perambalur, as per its judgment dated 27.02.2002, the convict has come forward to prefer the above criminal appeal on certain grounds as brought forth in the grounds of appeal such as that the Court below failed to consider the fact that there was no eye witness to the occurrence; that the Court below has erred in placing reliance on the evidence of P.W.5 who claimed that he saw the appellant around 3.0 0 p.m. on the date of occurrence, near the cotton field where the deceased was collecting cotton; that the Court below has erred in placing reliance on the identification parade conducted by P.W.8 on 29.04.2000 which is very much belated since the occurrence has taken place on 23.12.1996; that the identification parade was not conducted according to the procedure laid down in respect of identification parades; that the Court below has erred in not considering the fact that the case was registered as suspicious death on 23.12.1996. Furthermore, even though the appellant was arrested on 13.06.1999 belatedly, there was no direct evidence to implicate the appellant; that the alleged recovery from the second accused on 01.07.1999 the properties concerned in this case is inadmissible under Section 27 of Indian Evidence Act; that even then the properties viz., M.Os.1 and 2 have not been identified by P.W.1 as belonging to the deceased; that the Court below has erred in not considering the fact that P.W.7 who has attested the confession statement of the accused has given a different place of arrest. On such grounds, the appellant would ultimately pray to set aside the order of conviction and sentence arrived at by the trial Court in its judgment and pray to set him at liberty.

11. It is only challenging the conviction and sentence as arrived at by the Court of Sessions Judge, Perambalur, as per its judgment dated 27-2-2002 the convict has come forward to prefer the above Criminal Appeal on those grounds extracted supra as grounds of Appeal.

12. During arguments, the learned counsel appearing on behalf of the appellant besides narrating the facts and events as it has been putforth on

the part of the prosecution before the Court below would also point out certain vital aspects; that the place of arrest and confession differs; that even though the appellant was arrested on 13.06.1 999, recovery was made only on 01.07.1999; that Ex.P9 is a fabricated document and it cannot be believed at all since the place of arrest and other particulars are corrected and they are written in different inks; that P.W.5 does not speak about the occurrence and about the person he saw on that day to anybody, till he was examined in the year 1999; that identification parade was not conducted properly with the similar looking persons like the accused; that apart, if there is a delay from the date of occurrence to the date of identification parade, there is a chance for the witness to identify the person wrongly; that the photographs of the appellant was published in news papers and T.V.; that the identification parade was not conducted according to the procedure and there is a long gap.

13. Learned counsel appearing for the appellant relied on Rajesh Govind Jagesha Vs. State of Maharashtra (AIR 2000 Supreme Court 160) which it is held:

"As noticed earlier, the accused No.2 was arrested on 20.01.1993 but the identification parade was held on 13.02.1993. It is also not disputed that at the time of identification parade, the appellant was not having beard and long hairs as mentioned at the time of lodging of FIR. It is also not disputed that no person with beard and long hairs was included in the parade. The witnesses are alleged to have identified the accused No.2 at the first sight despite the fact that he has removed the long hairs and beard. What prevented the Magistrate from associating one or two persons having resemblance with the persons named in the FIR is a mystery shrouded with doubts and not cleared by the prosecution. The possibility of the witnesses having seen the said accused between the date of arrest and the test identification parade cannot be ruled out."

He has also relied on Vijayan Vs. State of Kerala (1999 Supreme Court Cases (Cri) 378) wherein it is held:

"..... Accused Vijayan having surrendered was arrested on 04.07.1 984 and the test identification parade was held on 07.08.1984. This test identification parade was discarded by the learned Sessions Judge as it was apparent from the evidence of P.W.3 that the photograph of the accused Vijayan was shown to her before the test identification parade and further, just before she was entering the sub jail to identify the accused, somebody had told her to identify the tallest man shown in the parade. The High Court also agreed with the conclusion of the learned Sessions Judge and did not rely upon the same but queerly enough, the High Court relied upon the evidence of P.W.3 as she identified the accused in Court after so many years on the ground that corroboration to the same is available. This conclusion on the face of it is unsustainable."

14. On such arguments, the learned counsel for the appellant would seek to allow the above Criminal Appeal and set aside the conviction and sentence ordered by the Court of Additional Sessions Judge, Perambalur.

15. On the contrary, the learned Additional Public Prosecutor sailing along with the judgment of the lower Court would see reasons for the lower Court to trust the evidence of P.W.5, who even on the first day when he was examined by the police has given the identification of the accused as a dark complexioned and short in structure and therefore, it is only for clarity to be obtained the identification parade was held, in which also P.W.5 unerringly pointed out the appellant touching his body. Further even in the Court, while at the time of his examination, P.W.5 would pin pointedly adduce evidence to the effect that it was this appellant who was the first accused, who he saw in the cotton field on the date of the occurrence at 3.00 p.m. Moreover, the lower Court would believe the recoveries effected from the second accused therein and the recovered jewels M.O.1 series and M.O.2 which were recovered under the cover of Ex.P.9 would be identified by the accused, who showed the second accused as the receiver of the stolen properties taking the police to the place of the second accused in the presence of P.W.10 and one Kumar and therefore, the lower Court has every reason to believe that it is the appellant, who committed the crime of murder and committed theft of the jewels from the body of the deceased with dishonest intention of misappropriating the same and hence, would find reason in the lower Court arriving at the conclusion to convict and sentence the appellant in the manner that the lower Court has decided.

16. The learned Additional Public Prosecutor would also rely on those judgments cited in favour of the case of the prosecution reported in AIR 1974 SC 1830 and AIR 1978 SC 522, wherein, the first judgment is regarding the recovery of the stolen property from the possession of the accused and drawing the presumption in accordance with the illustration (a) to Section 114 of Evidence Act and in the second judgment cited above, wherein, it has been tellingly given that in the case in question the prosecution succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction and unexplained possession of the stolen property by the accused/appellant justified the presumption that it was he and none else, who had committed the murder and robbery. On such arguments, the learned Additional Public Prosecutor would pray to dismiss the above Criminal Appeal confirming the conviction and sentence passed in the judgment of the lower Court.

17. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the appellant and the Additional Public Prosecutor contra it could be assessed in a nutshell that it is a case of murder for gain perpetrated on the part of the appellant single handed even though the second accused before the trial Court was accused of having instigated the crime of not only the commission of the offence of murder, but also committed robbery of the jewels with a dishonest intention of misappropriating the properties of the deceased and therefore, the appellant was charged for the offence of murder under Section 302 and got convicted for life and to pay a fine of Rs.1000/-, in default to undergo imprisonment for six months for the offence of murder and under Section 404 I.P.C. he was convicted and sentenced to undergo rigorous imprisonment for

two years and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for three months. The trial Court would also convict and sentence the second accused therein for life for the offence under Section 302 r/w. 109 I.P.C. and for various other offences under Sections 411, 413 I.P.C. etc. against which the second appellant has preferred a separate Appeal. It is relevant for consideration to take up only the above Appeal preferred by the appellant/ first accused and assess the merit of his case, who singly committed the murder of the dumb girl Papathi and robbed of her jewels M.O.1 series and M.O.2.

18. There is no eye witness to the occurrence. But a strong circumstantial evidence is made available through P.W.5, who saw a dark complexioned and short man at the place where the deceased was working in the field collecting the cotton at 3.00 p.m. on 23-12-1996 and immediately after the occurrence when his statement was recorded, this witness would not only give the identification of the person, who was standing nearby, but also would assure that he would identify him if he was shown to him.

19. The police causing the arrest of the appellant would record his confession through which they recovered the robbed jewels from the second accused in the case, who is a professional receiver of stolen properties and a habitual offender of the commission of the offence of such sort punishable under Section 411 Cr.P.C. and in fact the appellant, who is also a professional of committing such crimes was in the habit of selling the ill gotten wealth for paltry sums to the second accused and it is not only the appellant/first accused, who lead the police to the place of the second accused, without whose guidance the police would not have thought of or imagined of the second accused at all and would also identify M.O.1 series and M.O.2, besides these circumstances P.W.5 identifying the appellant in the identification parade and in the Court is a very strong circumstance working against the appellant even though serious objections were made on the part of the defence for the manner in which the identification parade was held and P.W.5 identified the accused and was taking serious exception for the evidence of P.W.5 dubbing the same as unbelievable, but still the strong circumstances have helped the lower Court to form its own presumption as it is indicated under Section 114 of Indian Evidence Act to arrive at the valid conclusion to hold that it is this appellant, who committed the offence of murder for gain

and robbed the M. Os. 1 and 2 from the body of the deceased, who was a helpless dumb girl working innocently in the cotton field without anybody's help.

20. Witnesses may lie - not the circumstances. The nonexamination of any eye witness in this case is not at all an impediment for the lower Court to arrive at its valid conclusion since the circumstantial evidence, which have been broughtforth on the part of the prosecution in proving its case beyond all reasonable doubt has enormously worked in favour of the case of the prosecution and therefore, there is absolutely no room for this Court to doubt the conclusions arrived at by the trial Court to convict and sentence the accused in the manner that it has done.

21. A careful perusal of the judgment of the lower Court would reveal that the trial Court has not only traced the case of the prosecution as put up on the part of the prosecuting Officials in a cogent and convincing manner, without creating any artificial witnesses or planting the witnesses for the purpose of depicting them as eye witnesses and further, affording adequate opportunities for bothsides to be heard in full and appreciating the evidence placed on record as afore extracted, has arrived at the firm conclusion to hold that it was the appellant who committed the offence of murder and robbery of the jewels of the deceased girl Papathi, so as to inflict the punishment of imprisonment for life and to pay a fine of Rs.1000/- besides a rigorous imprisonment for two years. This Court does not find any inconsistency or infirmity or legal lacuna or serious laxity in not only the conclusions arrived at by the trial Court to convict and sentence the accused in the manner that it has done, but also the manner in which valid conclusions have been arrived at by the Court below and therefore,the interference sought to be made into the well considered and merited judgment passed by the trial Court by the appellant in the above Criminal Appeal is neither necessary nor warranted in the circumstances of the case and hence, the following judgment.

In result,
i.the above Criminal Appeal does not merit acceptance and it becomes liable only to be dismissed and the same is dismissed accordingly;
ii.the conviction and sentence passed by the Court of Additional Sessions Judge-cum-Chief Judicial Magistrate, Perambalur, in S.C.No. 26 of 2001 dated 27-2-2002 is confirmed.

paa

Index : Yes
Internet: Yes

To

1. The Additional District Sessions Judge
cum Chief Judicial Magistrate
Perambalur.

2. -do- thro' The Principal Sessions Judge,
Perambalur.

3. The Inspector of Police
Perambalur Police Station
Perambalur.

4. The Superintendent
Central Prison, Trichy.

5. The Superintendent
Central Prison

Chennai-3.

6. The District Collector
Perambalur.

7. The Director General of Police
Chennai-4.

8. The Public Prosecutor
Chennai.